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SEVENTH SYMBIOSIS LAW SCHOOL, PUNE - INTERNATIONAL CRIMINAL TRIAL ADVOCACY COMPETITION, 2022

[SICTA]

April 21, 2022 – April 24, 2022

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TABLE OF CONTENTS

DECISION OF THE PRE-TRIAL CHAMBER	1
I. Relevant Parties	3
II. The Accused	5
III. The Situation.....	6
IV. Procedural History and Preliminary Matters	9
V. Charges.....	10
VI. Arguments of the Prosecutor	10
VII. Arguments of the Defence	11
VIII. Identification of The Victims.....	11
IX. Findings of the Chamber	13
WITNESS TESTIMONIALS	14
Prosecutor’s Witness Profiles	15
Defence’s Witness Profiles	20
Victim’s Witness Profiles	24
ANNEXURES	29
Annexure I - Map of Titan	30
Annexure II - Ground Report Truth Commission of Titan	31
Annexure III - Diagrammatic representation of the Holy Cross School of Titan	33
Annexure IV - Excerpt of a Report Produced and Submitted by Jack Rider	34
Annexure V - Transcript of Text Messages Exchanged Between the Accused and his Sister	36
NOTES TO THE COMPROMIS	38

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DECISION OF THE PRE-TRIAL CHAMBER

DATED JANUARY 05, 2022

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No: **ICC-03/27-08/17**

Date: **January 05, 2022**

PRE-TRIAL CHAMBER IV

BEFORE: Judge _____, Presiding Judge

Judge _____, and

Judge _____

Registrar:

SITUATION IN THE SOVEREIGN REPUBLIC OF TITAN

In the case of

The Prosecutor v. Victor Yanakovich

PUBLIC

WITH PUBLIC ANNEXURES

DECISION PURSUANT TO ARTICLE 61(7)(A) AND (B) OF THE ROME STATUTE ON

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The office of the Prosecutor

Counsel for Victor Yanakovich

Legal Representatives of the Victims

Unrepresented Victims

The Office for Public Counsel for Victims

Unrepresented applicants for participation

State Representatives

Registry

Others

Detention Section

The **PRE-TRIAL CHAMBER IV** of the International Criminal Court (respectively, the “**Chamber**” and the “**Court**”), in the case of the Prosecutor v. Victor Yanakovich

HEREBY RENDERS THE FOLLOWING DECISION:

I. RELEVANT PARTIES

1. The Sovereign Republic of Titan (“**Titan**”) is a country following the common law system. Politically, the country is divided into provinces with each province exercising a degree of self-governance from the historical perspective. However, constitutionally, the federal government of Titan exercises direct control over its territory and political landscape. The country is also a permanent member of the United Nations Security Council and a member of the World Trade Organisation and is known for its civil rights model. The country’s social structure boasts of a multi-cultural and multi-ethnic population consisting of the Targarians, the Orionions, and the Moras, which are the three major communities in the country. The country is blessed with a culture of more than 1000 years of recorded history.
2. The Targarians consist of roughly fifty-nine percent (59%) of the population, while the Orionions capture around thirty-five percent (35%) of the country and the remaining percentage of individuals belong to the Mora community. Further, Titan also comprises of certain indigenous tribal groups residing in the marshy green-lands of the region. However, these three primary communities have existed in Titan for a long time. Their distinctiveness and differences have often led to unrest and disturbances in the country. Further, the two (2) largest groups – the Targarians, whose interest have historically been represented by the Targarian Liberation Force (“**TLF**”), a political outfit of the Targarian community, and the Orionions, represented by the Orionion Federal Communion (“**OFC**”) - have consistently made attempts to capture the political seat of power at the federal level acting as an adversary to the other. This internal unrest is backed by the historical context which led to the independence of Titan from formal imperial colonization.
3. The official language of Titan is “Xula”, an indigenous language developed and spoken around the southern and the central regions of Titan. Xula also happens to be the primary language of the Orionions. This community, while concentrated in dense settlements in the central and southern parts of the country speaks a standard form of

“Xula” with eighty-six percent (86%) of Orionions identifying their peers through the use of this language.

4. A different dialect of Xula called “Tangra”, was developed in the northern regions of the country, and was primarily adopted and pronounced by the Targarians. The Targarians were, historically, the owners of the most fertile of Titan’s northern terrains, were landlords and proficient farmers. Their farming initiatives led to a stable supply of food grains across Titan even during the most testing times, such as the onslaught of natural calamities like droughts and excessive rainfall, and other trying events like the two (2) world wars in Europe.
5. Titan shares its border with a country called Galador. Galador shares hostile relations with Titan and invests three percent (3%) of its GDP in defence and infrastructure. The country has also developed into a hi-tech economy in the past few decades. Galador and Titan are both parties to the Rome Statute and the Geneva Conventions (including the additional protocols thereto).
6. The Targarian community, due to its population size against that of other ethnicities of Titan, controlled the federal government of Titan from its independence as a former colony of the United Kingdom in 1975 till the year 2013. However, in 2013, with the victory of OFC in the federal elections, the TLF was quick to denounce the elections as arbitrary and unfair. The party also underwent an internal restructuring with calls to create a local self-governance in Tango, ostensibly, to protect the integrity of the region and as a mark of protest against the 2013 elections.
7. Thereafter, the senior-most members of TLF, called the ‘elders’, initiated a drive to form a TLF militia comprising of young men and women. As per reports obtained during the investigation, the militia was formed to disrupt governance in Titan through the use of aggressive protest methods and to defend discriminatory practices of the government. By May 2019, persistent skirmishes between TLF and OFC became common around colleges and urban centres of Titan. Further, between August 2013 and February 2019, local press statistics indicated a total of 140 attacks carried out in different cities of Titan linked directly or indirectly to the TLF.

II. THE ACCUSED

8. Mr. Victor Yanakovich served as the chief technician of Project Hawk from April 2015 till November 2020 during the relevant period relating to the crime being investigated. Under this designation, the accused was responsible for both - administrative control as well as the technical development of Project Hawk. Prior to April 2015, and since 2010, the accused served at the ministry of defence in Titan as an 'external consultant', an expert in the field of weaponization of artificial intelligence. Later on, he carried his role as an 'external consultant' in the conceptualization of autonomous drones for Titan. Prior to 2010, the accused served on the board of multiple weapon manufacturers based in Russia, France and Australia.
9. However, since 2010, the accused is believed to have built close ties with the Orionion commanders of the Titanian military. It has also been alleged that the accused passed illegitimate financial kickbacks to these commanders in Titan through unverifiable related party transactions where monies were routed through a host of shell companies linked to the accused either directly or indirectly or to his relatives. These kickbacks allowed the accused to gain access to the top brass of the OFC, the largest political party in Titan and to its leader, Mr. Charlie Fox, an Orionion, who subsequently defeated the TLF in the federal elections of 2013 to become the president of Titan.
10. At the relevant period, during which the crime(s) alleged are believed to have been committed, the accused is believed to have been at the helm of affairs with respect to Project Hawk and its drone programme.
11. In addition to his responsibilities towards Project Hawk and the Titanian military, the accused is also a former director of 3MZ Inc. ("3MZ"). This corporation is a corporate entity registered in the British Virgin Islands and has gained a considerable reputation in the area of advanced weaponization. The entity has acted as a dependable vendor to Titan under the leadership of President Charlie Fox. Over the course of time, under the leadership of the accused and other data scientists, 3MZ has been able to convince the administration of Titan that its services remain absolutely discreet and committed to principles of confidentiality and privacy with respect to state secrets. However, this entity is known to be under scrutiny in the neighbouring states for fuelling unrest by supplying rebel forces of Galador with advanced military-grade weapons.

III. THE SITUATION

12. The Situation pertains to the backlash faced by Mr. Fox on assuming power in the second federal elections held in 2017 to run the government of Titan for a second term. The country had witnessed multiple protests in the first term of the OFC government in light of several alleged allegations of discrimination and arbitrary exercise of power by the officials against the Targarian community. The Government was accused of targeting the said community using soft methods to avoid scrutiny by the international watchdogs. However, in March 2019, palpable skirmishes were reported between the Targarians and the Orionions. By September of the same year, the protests became violent in a short span of time. Mr. Fox responded to violence with a firm hand and by end of September 2019, the military was ordered to retaliate against any violation of executive orders concerning the relapse of law and order.
13. On December 14, 2019, a full-frontal assault was ordered by the President of Titan to crush all resistance in the Tango region. The Chamber also takes note of several reports by foreign media houses that claim that the Targarian community developed and used an internal militia to coerce the government into surrendering before the Targarian leaders. In pursuit of these aims, the militia, with the political backing of TLF, is reported to have engaged in severe violence against the critical infrastructure of Titan, including its airports and power-grids, and is believed to have been responsible for the abductions of key political leaders of OFC.
14. Further, this Court takes note of the reports published by the state-run media channels in Titan which claim that certain extremist groups in Galador are responsible for supporting and manipulating the Targarians against their own country.
15. Titan, finding itself in the midst of a prolonged internal disturbance, sent reinforcements in the Tango region to consolidate power in the northern terrain to thwart the Targarian uprising. Further, Titan also started a policy of mass arrests against any groups or associations formed with links to the Targarians.
16. In May 2020, reports emerged that drone prototypes purchased by Titan from the United States were being deployed by Mr. Fox to suppress the rebellion in Tango. It was reported that the state was ready to use all its might to crush all dissidents in Tango

and active surveillance projects were launched to profile and target the entire chain of command behind TLF. Investigation has revealed that by June 2020, the firepower of the highest grade and drones developed under Project Hawk were engaged in an indiscriminate counter-offensive against identified leaders of TLF. Minute data obtained of these extra-judicial assassinations was used by the technical team behind Project Hawk to train and feed the algorithms used in Titan's drone technology to improve their efficiency and accuracy.

17. However, such attacks caused tremendous unrest in Tango and aggravated the Targarians to consolidate the militia further against the Titanian army. In the interim period extending from May 2020 to July 2020, reports suggest a sharp spike in violence between the two communities leading to several casualties.
18. The Situation covers multiple instances wherein crimes covered under the Statute were committed by the President of Titan, Mr. Fox, the military commander, Mr. Jack Rider and the accused in this case. However, those instances are expected to be covered under separate cases and do not form the cause of action in the present case. The cause of action with respect to the present case is covered in the succeeding paragraphs.
19. On the specific occasion of July 26, 2020, intelligence operatives working for Mr. Jack Rider received tips from their local informants about a potential assembly being organised in Tango by the elders to run a sizeable participation drive for TLF's militia. The information received also referred to attempts by TLF to instigate soldiers of Titan's army who belonged to the Targarian community to rebel against the army and become defectors fighting for the cause of the Targarians. Apparently, the information received was cross-verified across different channels of informants.
20. In response to the tip received, Mr. Jack Rider called on the accused to discuss the aforesaid information and brief him on the threat perceived by the army intelligence. The accused and Mr. Rider, along with 4 additional army officers, were then briefed about the population distribution and the topography of the Holy Cross School and its adjoining areas. Admittedly, the school was located in the moderately dense population comprising of Targarians, local tribals and a few Orionion families as well. It was identified that the Holy Cross School was the only school in the region serving close to three (3) villages and was large enough to accommodate at least 500 individuals at a

time. The size of the school compound was identified by the accused as appropriate to hold a gathering of a large number of adults intending to be a part of the TLF militia. However, as per the documents submitted by the ICC Prosecutor as part of the preliminary investigation, two (2) other army officers participating in the said meeting emphasised on the identified site being a sensitive zone, in light of the potential that some classes may have been organized in the premises of the said school during the hours of the planned operations, a suggestion that was dismissed by the accused as irrelevant.

21. The meeting of the said individuals, by a thin majority of 4:2, voted to conduct a strike covering the entire compound of Holy Cross School while taking on record the objections raised by the two (2) dissenting officers highlighting that such an operation may be found to be “excessive, abusive and against established norms of the army”. The accused and Mr. Jack Rider thereafter planned an entire operation to target the members of TLF’s militia.
22. Around 3 PM on July 26, 2020, extremely graphic visuals of the massacre caused on the grounds of the said school were being circulated on the internet. The immediate stories published around the said incident criticised the use of such advanced robots in the army as may be capable of taking decisions excluding human control from the loop.
23. With time, the attack on the said school caused a huge uproar in the international press and news, and video reels relating to the mass killings were widely circulated on social media platforms. Taking note of the incident, the ICC Prosecutor decided to conduct a preliminary investigation into the situation in Titan with special emphasis on the roles played by Charlie Fox, Jack Rider and Victor Yanakovich based on a reference received by it from Galador.
24. In parallel, on October 13, 2020, the United Nations established a Truth Commission for Titan to intervene in the situation and pacify the warring factions in Titan. Due to the combined efforts of multiple countries, in November 2020, a ceasefire and truce were announced between TLF and OFC, with both parties committing to work towards a peaceful resolution of all differences.
25. Between the period of January 2021 and July 2021, Mr. Fox was asked to resign from his post and a transitional government was established in Titan. This government was

comprised of representatives from both the Targarians and the Orionions. As a measure of good faith, the Targarians allowed the post of the President to be occupied by another member of the OFC. The leadership of OFC, in return, arrested the accused and Jack Rider on October 21, 2021, and transferred their custody to the International Criminal Court in accordance with the applicable law, rules of procedure and evidence.

IV. PROCEDURAL HISTORY AND PRELIMINARY MATTERS

26. On August 24, 2020, Galador, a neighbouring state of Titan and a signatory to the Rome Statute, referred to the ICC Prosecutor (“**Prosecutor**”) the situation with respect to the conflict in Titan, including the attacks held on July 26, 2020, on the Titan Holy Cross School (“**Situation**”). On October 01, 2020, the Prosecutor released a preliminary report with respect to the Situation in Titan. By virtue of this report, the Prosecutor announced the Office’s conclusion that, *inter alia*, in its opinion, the attacks on Holy Cross School referred to it, via the Situation in Titan, fails to pass the legal standards governing the jurisdiction of the Court with reference to Article 17(1)(d) of the Statute. The report clarified that the incidents, which form the subject matter of the reference and allegations pertaining to the commission of crimes under the jurisdiction of the Court, fall beyond the threshold of sufficient gravity to warrant action by the Court.
27. On October 7, 2020, Galador filed an application, under Article 53(3)(a) of the Statute, before the Chamber to review the decision made by the Prosecutor with respect to the incident that occurred on July 26, 2020. The primary argument raised by Galador, in this application, was that the Prosecutor has failed to appreciate the legal factors relevant for a determination pertaining to gravity under Article 17(1)(d) of the Statute. Galador relied upon precedents to argue that the attack on Holy Cross School passed the thresholds prescribed under the Rome Statute and that the Prosecutor can take those instances into account for an elaborate investigation wherein such instances shall be incidental and ancillary to the Situation referred.
28. This ICC Chamber took into account the submissions made by the Prosecutor as well as Galador, and as per the order dated February 03, 2021, acceded to the request made by Galador, and requested the Prosecutor to reconsider its decision not to investigate the attack on civilians and children on July 26, 2020, qua the report dated October 01, 2020, on the principle that the death of 270 children and close to 100 adults, aggravated

by injuries sustained by many others, does reach the scale of atrocities required to trigger the jurisdiction of the Court and that any contradictory information on the issue of whether a set of act(s) amount to a crime under the jurisdiction of the ICC, cannot be used to extract a negative inference denying the jurisdiction of the ICC. Whenever the Office of the Prosecutor is faced with two versions of the same story, it is its duty to initiate an investigation into the reference and only upon a thorough investigation can the veracity of the contradictory claims be clarified.

29. Considering the aforementioned findings, this Chamber concluded that the decision of the Prosecutor to not investigate the attack on July 26, 2020, was invalid, and thereafter requested the Office of the Prosecutor to reconsider its decision. The Prosecutor, in deference to the said decision, reconsidered its own decision and decided to open an investigation into the attack on the said school as part of the investigation into the Situation.

V. CHARGES

30. On September 18, 2021, the Prosecutor filed before the Court, the document containing charges levelled against the accused for acts committed on July 26, 2020. The charge on which the accused is sought to be prosecuted is War Crime of Murder.

VI. ARGUMENTS OF THE PROSECUTOR

31. The Prosecutor has relied on a thorough investigation covering a multitude of evidence and witness testimonies to frame the charge against the accused. The Prosecutor has also cited a number of important international instruments such as the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and inputs received from international associations such as the Group of Governmental Experts convened by the United Nations Convention relating to Certain Conventional Weapons in December 2016, with the intention to bring to the notice of the ICC the jurisprudence surrounding the use of weapons enabled with machine learning capabilities.
32. This Chamber further notes that the Prosecutor has argued that the present framework of the Rome Statute is sufficient to impose individual criminal liability on the accused

for actions committed by the drones used under Project Hawk against the civilians killed in the Holy Cross School on July 26, 2020.

VII. ARGUMENTS OF THE DEFENCE

33. The defence team representing the accused, through a series of oral arguments and written submissions, has *inter alia* argued that no liability can be attributed against the accused in the present case as the tragedy that occurred on July 26, 2020, was beyond the reach or effective control of the accused and committed by autonomous weapons designed to act without human aid, intervention or participation. The defence has argued that the same will be established during the examinations of the witnesses and analysis of the evidence submitted by the Prosecutor.

VIII. IDENTIFICATION OF THE VICTIMS

34. The Pre-Trial Chamber also acknowledges the application dated December 22, 2021, submitted by the Truth Commission of Titan (“**Truth Commission**” or “**Commission**”) seeking leave of the Chamber to participate in the proceedings against the accused. Before we proceed to discuss our observations regarding the application dated December 22, 2021, it is important to provide the context in which the application has been made. The Truth Commission is an apolitical, non-partisan, non-profit and non-governmental group working under the aegis of the United Nations. The Commission has been operating as a specialised committee responsible for recording and preserving data, records and facts, deeds and documents in conflict-ridden zones across the world. The Commission operates on an ad-hoc basis and is governed under a special instrument ratified between the United Nations and the committee of elders of Targarians, the oldest and most prominent local self-governance body of Targarian community members comprising of hundreds of individuals affected by the Situation under investigation.
35. The Commission now seeks to participate in the trial of the accused in the capacity of the Legal Representative of the Victims.
36. During the course of the proceedings so far, the Commission has made multiple submissions, both oral as well as written, before the Chamber arguing its status as a

victim with respect to the Situation being investigated. An appropriate opportunity has been given to the Prosecutor as well as the defence team of the accused to make submissions regarding the application dated December 22, 2021.

37. The Chamber, after due consideration of the relevant provisions, including, Articles 57(3)(c), 67(1), 68(1) and (3) of the Statute, Rules 85, 86, 89, 90, 91 and 103 of the Rules of Procedure and Evidence and Regulations 24(2), 80 and 81 of the Regulations of the Court, admits the applicant as the Legal Representative of the Victims to the proceedings in the case against Mr. Victor Yanakovich.

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IX. FINDINGS OF THE CHAMBER

For these reasons, the Chamber hereby:

- (a) **DECIDES** that it has jurisdiction over the present case and determines that the case is admissible;
- (b) **DECIDES** to confirm, pursuant to Article 61(7) of the Statute, the charge presented by the Prosecutor against the accused to the extent specified in the aforementioned passages of the present decision and to **COMMIT** the accused to the Trial Chamber for trial on the charge as confirmed.
- (c) **TRANSMITS** this decision and the record of the proceedings in the instant case to the Presidency pursuant to Rule 129 of the Rules.

Done in English and French, the English version being authoritative.

Judge _____

Presiding Judge, Pre-Trial Chamber II

Judge _____

Presiding Judge, Pre-Trial Chamber II

Judge _____

Presiding Judge, Pre-Trial Chamber II

Dated this January 5, 2022

At The Hague

The Netherlands

WITNESS TESTIMONIALS

Note: The various testimonies/profiles forming a part of this Compromis are not to be construed as formal transcripts of the statements given on oath or under any kind of judicial/quasi-judicial order, of any court, tribunal or legal authority, by the witnesses. These are mere indicators of the knowledge of the witness regarding the relevant circumstances attached with the subject matter of the testimony to be given before the Trial Chamber and/or regarding the objective description provided thereunder. However, the participants are at liberty to bring to the notice of the Chamber such instances where the concerned witness testifies against the fulcrum of these profiles. The Chamber will decide upon the severity and significance of such instances based on the merit of the question(s) posed by the concerned participant during the witness's examination/cross-examination process.

PROSECUTOR'S WITNESS PROFILES

PW – 1 (PROFILE OF PROSECUTOR WITNESS – 1)

Name: Mr. Alex Chamberlain

Nationality: Titan

Occupation: Member, Truth Commission of Titan – UN established body

Age: 47 years

General Description: PW-1 is associated with the Truth Commission established to investigate the assault against the Targarian population in Titan and the offences relating thereto. PW-1 and his investigation team researched and collated inputs from the members of the Targarian community including direct victims of the Titanian army. Their investigation stretched for a period of 11 (Eleven) months between January 2021 to August 2021 in the first tranche, and again from November 2021 to February 2022 in the second tranche. PW-1 shall testify about certain important details concerning the attacks under investigation. The following is the ambit of PW-1's testimony as described by means of a communication made by the PW-1 to the Office of the ICC Prosecutor.

Communication:

“Our investigation relates to the conflicts between February 2020 and March 2021. The Targarian rebel forces and the national parliament of Titan shared a distraught and highly tensed environment. Further, miscommunication and rapid dissemination of misinformation led by fringe groups on social media impacted mutual trust shared between the senior leaders of the nationalist party and the elders of Tango region.

With each passing day, the number of security forces deployed in the areas that share borders with Tango municipality was increased. At the same time, intelligence agencies reported unrest in the army factions with Targarian loyalists voicing dismay and concern over the treatment meted out on their community and Orionions military leaders including Mr. Rider sanctioning punitive measures to crush all dissent.

Our investigation has revealed that by mid-July 2020, highly lethal and specialized drones were engaged by the government to suppress all opposition from the Tango region. Interestingly, this drone programme was purchased from the United States for strategic defence purposes and its use was limited to the defence of the sovereignty of Titan as per formal agreements executed between the relevant parties and assessed by the Truth Commission. Further, the said agreements also provided for dedicated provisions under which members of a select group of technicians from Titan would be sent to a naval academy in the United States on secondment to learn and train in the operations and mechanics of the said drones. The ‘captain’ of this group of technicians was the accused, who later on came to head Titan’s drone programme. He, along with 6 others, spent 1.5 years in the US to learn active warfare using drone technology.

Certain members of this group of technicians who have deposed before the Truth Commission, on strict conditions of anonymity, of course, have narrated how the accused made it his personal ambition to merge his drone technology with the nationalist identity of the Orionion political parties. His association with Rider came to fruition due to shared greed for power. This translated into persistent lobbying efforts by the accused to allow him to use his drone programme in the internal affairs of the country. The drones’ capabilities to attack without human oversight was advertised as an efficient and seamless method of eradicating anti-social behaviour while preventing the loss of human life in the form of casualties among the law enforcement officers of the country. When Charlie Fox authorized the use of drones against Targarians, the accused was given absolute control over the offensive since he was the poster boy of Titan’s weaponry capabilities and perhaps the only individual who understood the anatomy of the algorithms that worked behind these drones.”

PW – 2 (PROFILE OF PROSECUTOR WITNESS – 2)

Name: Olang Maruto

Nationality: Titan

Occupation: First Commander, the Royal Fleet of Titan

Age: 58 years

General Description: PW-2 is a serving officer in Titan's army and was among the first members of the Targarian community to join the armed forces of independent Titan. Further, prior to his elevation in the defence forces, the witness was a technician employed with the defence forces of Titan and was a part of the select group of individuals given the responsibility to assist in the development of the country's drone programme. The witness intends to testify against the character of the accused and the scope of this knowledge in connection with the events that took place on July 26, 2020. The witness has also actively assisted the Commission in documenting the nuances of the historical issues between the two major communities of Titan.

Communication:

“Along with the accused, I have had the opportunity of working for Project Hawk for close to 7 years. The entire programme is aimed at the minimum requirement of human participation with maximum impact on the target. The tragedy which occurred in Holy Cross School was only due to the malafide use of a weapon of mass destruction by a corrupt individual in charge of such systems.

The entire incident occurred on July 26, 2020. At around 10:15 am local time, our intel sources conveyed chatter in the local community of a massive civil assembly being organized by Targarians in a public school in Tango. Ostensibly, the assembly was to be convened to depict the Targarians unity and strength against the federal government. Commander Jack Rider interpreted the assembly as a recruitment drive and ordered forces to track the movement of some key Targarian militants.

By 1 PM, the accused walked into our office and informed us that supervising commander, Jack, had instructed us to initiate the launch of Project Hawk in sync with the military's

operations in the vicinity. Interestingly, while our internal protocol requires that drones launched in the first phase of any mission should only be loaded with reconnaissance and lethal abilities be installed only when needed, in this case, the accused, overriding our internal protocol, directed us to release advanced versions of ‘Hawks’ directly into the air with the Holy Cross School locked in as the target facility. We were informed by the accused that the school is an empty decoy being used as a hideout facility by Targarians.

By 1:20 PM, our drones were circling around the school with the in-built set of cameras reading a large and dynamic movement within its premises. Within a few seconds, the set of 7 inter-connected drones was able to throw at us footage of children on the campus along with other Targarians, some of whom were recorded in our database as affiliates of the militia. However, we did not receive any video feed of any firearm barring a few sporadic machetes and sabres. At 1:35, we received confirmed visuals of a militia leader and the accused locked his image in the mainframe server of the drones. The predator drones were now at liberty to aim and shoot at the graphic image of the target. The first shot was fired through an open window, and it penetrated the skull of the target. But, as anticipated, the sound of the shot and its impact created an immediate panic in the school and everybody started running outside to the only exit passage from the compound where our men were already stationed in hiding. During the ensuing confusion, the drones picked up on the bio-matches of another set of 4 militants whose data was part of our servers. The machine learning programme instilled in these machines taught itself to identify such a situation as one of extreme hostility and automatically prepared itself for an all-out inferno of an attack – prepared to destroy the maximum perimeter it was built to cover - which in this case was equal to the size of a standard football field.

It is important to understand at this stage that the algorithms which power Project Hawk, by inherent design, provide 7 seconds for the designated authority to suspend the ‘kill’ command before the drones automatically start firing at the identified threat.

7 seconds can disappear very quickly. Before anybody could blink an eyelid, the drones, and on their cue, the army, acted in unison, and the entire open area was filled with bodies and survivors gasping for shelter.”

“So far as the accused is concerned, he has always been a highly ambitious and opportunistic individual. His connections with the power corridors of the OFC are a result of his unforgiving and ruthless tactics against his adversaries. The same applies to his association with the Government of Charlie Fox and the commanders of the military.

It will not be an exaggeration to say that this man was able to sell greed and induce corruption in the most noble ranks amongst us. I have personally been privy to dinner appointments where he would offer lucrative schemes to the army men to secure our old-age dreams. He would arrange for and fund exquisite gala retreats to the most expensive of resorts in Titan for serving members of the force. I am also aware of multiple instances where some of my peers were offered rare watches, booze and holiday tours by the accused. Further, we found that Victor was ever-ready to help an army veteran secure a position paying a high salary in his companies. His sister would invite our officers to act as consultants to his company’s operations – the very operations under which he would pitch Project Hawk and other assignments relating to the development of weapons and aerial surveillance instruments to our government.

In return, these officers would receive extremely handsome payments for their services – payments which would often be routed through bank accounts registered in the names of such officers’ relatives. Most men in the army have never seen such kind of money, let alone the question of earning it. Quite naturally, it became easy for Victor to buy insiders in the army to convince the executive to place their faith in the promises and skill-set of Victor and his engineers. These insiders would then help Victor charge an unjustified amount from the government for the development of mechanical parts – some of which would be used for his personal wealth and the remaining to continue the cycle of spreading corruption in the army. By my estimates, within a period of 3-4 years, his man was able to buy the loyalties of 6 out of 11 of our commanders, at least, and several other subordinate officers.”

DEFENCE'S WITNESS PROFILES

DW – 1 (PROFILE OF DEFENCE WITNESS –1)

Name: Mr. Victor Yanakovich (Accused)

Nationality: Titan

Occupation: Chief Technician, Project Hawk

Age: 49 years

General Description: The accused has been an integral part of Project Hawk since its inception. In the year 2015, the accused was promoted to the designation of the chief technician of Project Hawk. He has also served as the CEO and a director of 3MZ, a mercenary operation company, which undertakes development projects relating to technology-driven and intelligence-based electronic surveillance equipment, such as infra-red and night vision cameras, high-powered telescopes, etc.

Communication:

“I have been offered as a scapegoat to pacify TLF’s leadership in Tango. Nothing on record corresponding to my true conduct can be linked with any criminal intent. My defence is to bring forth before this court the real state of affairs regarding my involvement in the fight between the TLF and OFC.

Firstly, I am not a trained soldier or a mercenary. This is to clarify that I have no understanding of or training in the use or mechanics of guns, ammunition or any other kind of firearms. I am a software developer. I sit behind a computer and type codes. The situation that presented itself during the afternoon of July 26, 2020, was an extraordinary one. I was unfit and unqualified to be in the position I was placed in on July 26, 2020, and certainly unqualified in so far as the decision to save the life of hundreds of children was concerned. I did not pull the trigger on those civilians who died that day, nor was I the commander or aider or abettor in the action that led to the death of all those individuals. The drones belonged to Titan’s army and I am not a part of that army.

Secondly, my business interests being probed in this trial are my private interests and have nothing to do with the assistance I may have given to the government of Titan as a consultant. Further, seeking profit maximization in and of itself cannot be termed criminal. Yes, we wine and dine with army officials to seek preferential treatment. It's called lobbying and there is nothing unethical or illegal about commercial lobbying.

Thirdly, Project Hawk was a visionary programme precisely because it wasn't dependent on the efficiency or expertise of a soldier. It was a soldier in and of itself – capable of exercising its independent judgement based on pre-defined principles fed into its system as written codes. Please understand – this system is designed to consistently try to exclude human assistance. Its purpose, its inherent nature is to act with autonomy and quickly. It's not an attempt to ease the burden on soldiers, it's a method to replace them. It represents the direction in which weapons technology is poised to move for the next set of decades.”

DW – 2 (PROFILE OF DEFENCE WITNESS – 2)

Name: Sajul Singh

Nationality: India

Occupation: Reader, Sambain University, India

Age: 46 years

General Description: DW-2 is a former member of Project Hawk and resigned from the group in 2019 after developing a career of at least 10 years in developing the internal capabilities of Titan’s army. Since then, the witness has been teaching in colleges affiliated with a university in Titan. The witness intends to testify as to the jurisprudence and ethics relating to artificial intelligence in the context of the scope of the accused’s knowledge in connection with the conflict with Targarian forces and his position, roles and responsibilities in the hierarchical set-up of Titan’s defence forces.

Communication:

“In my limited understanding, criminality is associated with specific intent and evades the negligence standard generally associated with moral or civil accountability. The case of most unmanned aerial vehicles or UAVs and especially those built on machine learning syntax, therefore, becomes very different and complex from any other instance involving a gun and a shooter.

Take, for instance, the applications used to detect hate speech and inappropriate content on social media platforms. These applications have regularly failed to detect content harmful to the society or anti-social in the context of law and order. Sure, these applications are far removed from being ideal. But that is only because human beings behind these applications can predict only so much of what can happen while designing these applications. And once online, these applications are their own masters. They are expected to run in real-time by collecting, collating, analysing data, and drawing judgements from them – with the least amount of supervision, if any. Even if supervision is present, such supervision is often post-facto.

Similar principles apply in the case of armed UAVs which can process data at an impossible speed and provide their human controllers with unrealistic timelines to review their feed before auto-engaging in combat. Technological advancements discussed in conferences around the world also highlight how the human controller is also ultimately a pawn – in that his view is circumscribed by the point of view of the UAV – the same UAV for which incremental performance is measured in terms of increased body count, thus incentivising a manipulated view of the ground situation [...]

In light of these emerging principles, Victor's role needs to be assessed. Ultimately, we were civilians caught up assisting the military in Titan. Our understanding of the geopolitical disturbances, or assessment of the circumstances which led to the conflict between the government and the Targarians was as much as any other civilian. This was not our war, and we were ignorant of its very existence. We helped run computers and machines used by the army and were paid for such maintenance. Putting Victor on trial is equivalent to putting the mechanic who repairs your car on trial for a motor accident done by the owner of the car [...]

As far as Victor's position in Project Hawk is concerned, he was the man responsible for paperwork, he coordinated between human resources working for the projects, he made sure deliverables were given and timelines adhered to. Of course, in addition to these limited administrative tasks, he was the finest scholar of artificial intelligence amongst our lot. But that intelligence was organized around his passion to develop interesting machines. Any attempt to infer any criminal liability from the same would be unfair and unreliable.

The military operates under a vast network of commanders, first officers, lieutenants etc. While on paper, at the bottom of this food chain are the soldiers, technically, our lot falls even below these soldiers. Because we are not the employees or even external attaché to army personals to the army. We are service providers, dependent on contracts executed with the army. By law, we are outsiders to the operations or confidential information or state secrets relating to the army. Against, it is to be asked – how can we be held liable for offensives designed, controlled and executed by the army. We follow the instructions of officers sitting behind our desk.”

VICTIM'S WITNESS PROFILES

VW – 1 (PROFILE OF VICTIM WITNESS – 1)

Name: Dr. Alexander

Nationality: United States of America

Occupation: Special Instructor, Third Officer, Naval Academy of the United States at Maryland.

Age: 51 years

General Description: VW-1 has been coaching engineers handling advanced weapons with artificial engineering features for the past 14 years. The Witness was also assigned to train the visiting contingent of technicians from Titan under the cooperation deals between the United States and Titan. The Witness intends to testify regarding the contents of the coaching module developed for foreign contingents at the Naval Academy at Maryland.

Communication:

“It is very important for us to bring before the International Criminal Court some very important aspects of the training given at the academy. Please note that all instructors, by the common curriculum developed for such programmes, are mandatorily required to spend at least 11 hours of the training period in detailing the scope and ambit of international humanitarian law, the Geneva Conventions, rules of engagement in battlefield qua different possible scenarios, etc.

Further, in the case of modules dealing with weapons embedded with artificial intelligence, our routine practice is to provide all master programmers, given the designation of a designated authority, with extensive lessons and training dealing with the ability to make decisions that can adversely impact human life within 3-4 seconds of the first sighting of potential collateral damage. Our instructions for the training to be given to the men who came from Titan were no different, presumably in light of the limited drone technology in place in Titan. We use state of art audio-visual simulations to place these engineers in virtual scenarios which mimic real-life scenarios on the battlefields to make sure that each designated authority

achieves a sophisticated sensory awareness of the visuals on screens in a control room and make quick life-saving decisions on the battlefields.

The reason why we spend so much time and effort in these aspects is because we understand that once unleashed, autonomous weapons can cause massive destruction of life, limb and property. Further, the algorithm will not even give a second thought about its potential victims once the initial go-ahead is perceived from the designated person until no life can be detected by the biometric sensors installed in the corpus of the machine. You see, technically, we have had automated weapons even before the invention of the world-wide-web. However, the autonomy of weapons is a new phenomenon. A phenomenon driven by machine learning – combining a very intricate web of complex and lengthy algorithms designed to improve upon the output with every successive trial, with all other input variables remaining more or less constant.

Automated weapons are thus at the mercy of the command – the human element that exercises practical control over such weapon systems. Think of an M2 Browning Machine Gun for an example. It is an assault rifle, kind of a favourite of the armies in the advanced countries. The machine is fully-automatic because it does two actions – (a) it uses the extra energy of the previous shot fired to feed a new ammunition in the fire chamber; (b) strikes the primer to ignite the propellant and discharge the projective. The weapon is capable of continuing this cyclic episode till the time there are magazines to feed the relevant ammunition. But the most important bit is that a human interface is required to fire the first shot which feeds the machine with the required energy and a human interface to make sure that the trigger remains depressed through the intended time. Thus, there is a clear pattern of human ownership over consequences brought forth by most automated weapons.

Such may not be the case if the weapon is autonomous. Take for example the Iron Dome, a defensive autonomous system used by Israel that is very capable of detecting incoming projectiles and engaging with them without much human intervention. Another simpler example of autonomous weapons in a mine – antipersonnel mine, capable of detonating on simple impulses.

Without forming an opinion on the nature of drones used in Titan, most offensive drones are equipped with biometrically charged sensors, cameras and microchips powerful enough to identify targets, lock their position, adapt as per the dynamic movement of the targets and

deliver, with precision, the ammunition(s) fed into the mechanical body of the drone. These drones then become terminators, capable of taking decisions and improving the strike rate with time. No operator can undo the adaptations developed in a drone – not at least in real-time.

That said, the real brain of a drone system will, in most cases, vest with a human command. Countless training hours are spent in training individuals who man these drones to abort missions or suspend all firepower of a drone in case of suspected collateral damage being greater than the prize. Technology today hasn't reached a stage that a drone can operate in an environment which is 100% divorced from any human control.

The international community has always been very apprehensive about the usage of such machines due to the unnecessary and extremely disproportionate harm caused by such drones. Even here in the United States, we prefer to ensure that at least one human resource is always in control of the loop, howsoever remotely placed.”

VW – 2 (PROFILE OF VICTIM WITNESS – 2)

Name: [Redacted]

Nationality: Titan

Occupation: [Redacted]

Age: [Redacted]

General Description: VW-2, a survivor, of the attack that took place on July 26, 2020, has been brought to render testimony regarding the actual incident which happened on the compound of the Holy Cross School and wishes to remain completely anonymous.

Communication:

“I have worked as a janitor in Holy Cross for many many years. The school was a second home to us and all of us had one or another relative in the villages surrounding our school.

Thankfully, that day, there were hardly any classes scheduled during the daytime. Recess was anticipated by the teachers and the students alike. Some members of the party were assembled in the boarding houses placed adjacent to the main building. I think that it was around 1:30 PM that the first shot was heard as it shattered the glass window and killed a man in one of the classrooms. There was an immediate commotion as we could hear screams of around 30 children erupting at once. The adults in the area shouted instructions to vacate the building immediately. We were convinced that the army must have decided to attack our children as well. The entire academic block rushed outside into the open. As I came out, I could see people from the boarding shelter also running towards the exit and they could hear the distinct buzzing sound of a flying machine above us. The machines then started firing shots in rapid succession. A pandemonium ensued with everybody trying to get out of the exit gates all at once. Then the real horrors were unfolded. Men in uniform blocked our passage at 50 metres from the exit. They started firing. There was an utmost confusion as there was no way to move forward or retract our way back to the school. Within minutes, limbs were flying and bodies were sent to the ground. If someone was lucky enough to escape the bullet, the stampede was enough to crush them. Children and adults alike were decimated by the fire falling through the sky. The machines and the soldiers did not stop shooting at us.

This exercise went on for 35 to 40 minutes. Those alive amongst us were left exhausted and drained of all will and energy to live. Those of us who were wounded were refused any sort of treatment. Our possessions were snatched away by the soldiers. Out of sheer agony and frustration, I saw a child attempt to scale the walls of the compound to escape her misery. The next moment I remember a bullet piercing her eyes from the back of her head. I saw her head blast in front of my eyes and the aeroplane buzzing past her corpse to hit the next person in sight.”

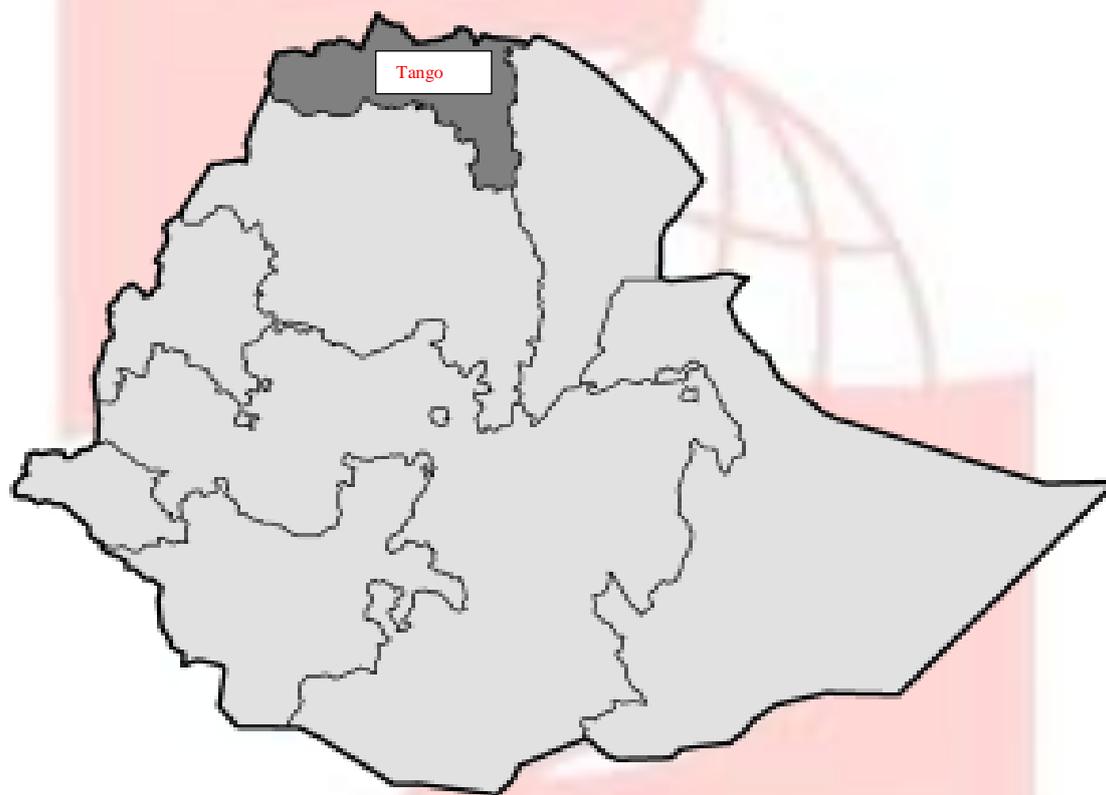


ANNEXURES



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ANNEXURE I - MAP OF TITAN



ANNEXURE II - GROUND REPORT | TRUTH COMMISSION OF TITAN

[...] This report relates to the conflict of interest investigated by the Truth Commission of Titan involving the vested interests of Mr. Victor Yanakovich and Mr. Jack Rider in 3MZ Inc. (3MZ), a shell company incorporated in the British Virgin Islands. These issues are being investigated for their probable contribution to the political disturbances caused in Titan relating to the Tango region.

As per formal records extracted by the Commission, 3MZ was incorporated in the year 2012 by Mr. Victor Yanakovich. Further, we understand that since its incorporation till May 2021, the entity was being managed by two (2) directors – Mr. Yanakovich and his sister, Miss Jean Yanakovich. As of the date of this report, the entity is undergoing a voluntary winding-up process initiated by Mr. Yanakovich on behalf of the entity.

The investigation has revealed that 3MZ was unilaterally awarded major defence procurement contracts by the Ministry of Defence which was under the control of Mr. Charlie Fox, without any formal bidding process, against the established practice of the said department. Under these procurement contracts, 3MZ had the power to negotiate and revise its consideration substantially on a yearly basis [....].

The Commission takes note of the reports published by the Wall Street Journal and some local newspapers which claim that the entity 3MZ made illegitimate gains from the procurement contracts offered by Mr. Fox in breach of official protocol. These reports also suggest that Mr. Victor Yanakovich made all attempts to prevent public scrutiny of his links with 3MZ while heading Project Hawk to circumvent corruption charges. Further, it has also been noticed 3MZ failed to maintain and apply with consistency any set of accounting standards to its books and financial records [....].

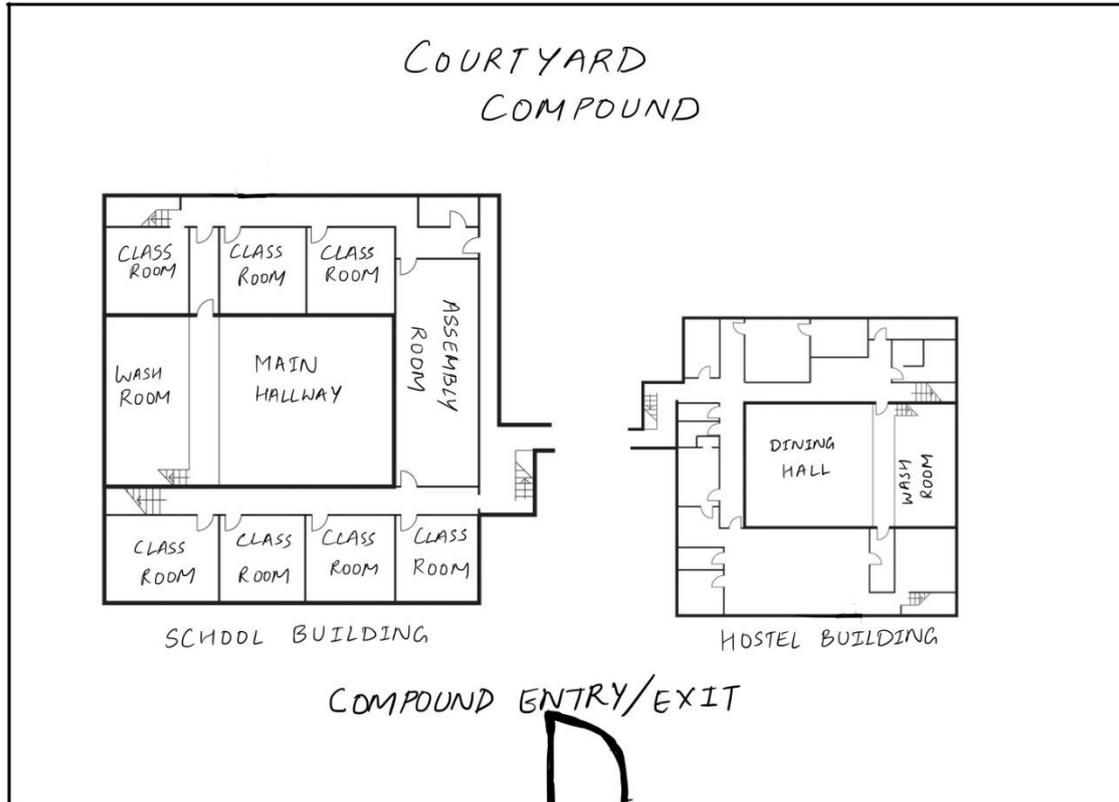
Through interviews conducted with members of the Targarian community, the Commission has taken on record accusations that the conflict against the Targarians allowed 3MZ, and Mr. Victor Yanakovich, to gain direct financial benefits. These financial benefits were exchanged on the promise that 3MZ will continue to provide high-quality spare parts used to make and assemble the drones used in Project Hawk. Such continuous dealing between the government of Titan and 3MZ created a public perception that the BVI entity was functioning as an arm of the state machinery with no checks and balances on abuse of authority, guidelines relating to

conflicts or related party transactions and/or any public audit, all of which stood contrary to due process norms followed internationally.

Lastly, the investigation has revealed that by virtue of holding a private position in 3MZ and at the same time holding a public trust position of the chief architect of Project Hawk, Mr. Victor Yanakovich exercised enormous control over the active use of these advanced weapons technology systems against the Targarian community. By inference, the Commission is of the view that Mr. Yanakovich was motivated to continue the supply of such weapons for his personal and professional gains [....].

ANNEXURE III - DIAGRAMMATIC REPRESENTATION OF THE HOLY CROSS

SCHOOL OF TITAN



ANNEXURE IV - EXCERPT OF A REPORT PRODUCED AND SUBMITTED BY JACK

RIDER

The following is an excerpt of a report produced and submitted by Jack Rider before the defence department in August 2018, accessed by the Truth Commission, with due permissions from the Ministry of Defence, Titan.

THE INTRICACY SURROUNDING AUTONOMOUS WEAPONS

DRAFT REPORT PREPARED FOR THE BENEFIT OF MINISTRY OF DEFENCE, TITAN

Gentlemen,

It gives me immense pleasure to announce that Project Hawk has shaped up very well under my guidance and the continuous efforts put in by Victor, Scot, Andrew and their subordinates in the team. These boys have worked very hard to come up with a technology that has the potential of making Titan a global leader in automated warfare [....].

If we consider unmanned aerial vehicles, the most interesting of them all are systems capable of giving object control a high level of autonomy due to the maximum use of information awareness based on inputs that flow from environmental conditions and internal system status.

Functional intelligent models of such perspective system can be represented by 3 chief components: data in the form of information awareness backed by sophisticated quality tests, a functional task processor or brain which decides which way to a target to choose, and command prompt or limbs which comprehend and realize the action corresponding to the chosen way of achievement of the target identified.

Such perspective control systems are identified as a class of intellectual control systems with the realization of the function of information awareness. So, what do these components look like?

- (a) *It all begins with advanced sensors projecting invisible beams of light called lasers that can generate close to 200,000 points in a second and help the drone to understand where it is in any elevated position in space. These lasers can easily see in the dark because unlike human eyes, such lasers don't depend on light in the visual spectrum. Thus, thousands of these lasers being shot from the drones allow it to identify and*

navigate in the air in response to the most complex of the environment like an underground mine or hideout bunkers.

- (b) *The brain of our drone systems is a proprietary and highly classified algorithm internally developed by proud Titanians. This brain is where all information collated by the sensors is processed in sync with the mainframe servers and is driven by an equally important part – the lithium-based battery which sends electrons throughout the silicon internals of our drones, and allows it to perform actions otherwise impossible for our soldiers, all the while being under our control. Together, this system leans from its previous mistakes, adapts to new surroundings and can destroy targets in impossible situations with the least hesitation or buffer-time and almost absolute independence.*
- (c) *Lastly, the weapons and payload. The army is really grateful to our friends in the United States for sharing with us some of their most advanced destroyers and ammunition. The latest batch of ammunitions received by the Ministry [....]*

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**ANNEXURE V - TRANSCRIPT OF TEXT MESSAGES EXCHANGED BETWEEN THE
ACCUSED AND HIS SISTER**

The following is a transcript of text messages exchanged between the accused and his sister on July 26, 2020, on a messaging application domestically popular and built-in Titan, obtained by the Office of the Prosecutor, with the aid of local authorities in accordance with municipal law, during its investigation into the crimes committed by the accused.

Time and Date Stamp	Sender	Text
July 26, 2020 11:47 AM	Victor Yanakovich	It's going to be a long day for me today. Jack has gone nuts! The guy wants to blow up an entire school. This portfolio is becoming risky day by day. I'll see you tomorrow.
July 26, 2020 11:53 AM	Jean	They can easily find your replacement, Jack. Anyways, take care!
July 26, 2020 15:19 PM	Victor Yanakovich	Jean, This is urgent. Please destroy all files kept in the hard-drive marked RED.
July 26, 2020 15:48 PM	Jean	Hey, All okay?
July 26, 2020 15: 48 PM	Victor Yanakovich	Can't explain. Will call you separately. Destroy the hard drive and transfer some funds to accounts in Cayman Islands.
July 26, 2020 15:49 PM	Jean	I'm worried now. Call me ASAP. Will do the needful.

July 26, 2020 19:03 PM	Victor Yanakovich	I feel terrible now. What have I done! This thing will blow up in the papers by tomorrow morning. We have to prepare for the worst outcome. Nobody will be spared and can't trust Fox.
July 26, 2020 19:05 PM	Jean	I am following live updates. Those were school children, Victor. Expected you to be more careful.
July 26, 2020 19:11 PM	Victor Yanakovich	It's a lot more complicated than what you are seeing on the TV. I was frozen at the moment. There was too much pressure.
July 26, 2020 19:12 PM	Jean	You must resign and get out of Titan immediately. Let there be a cooling-off period. The media will move onto the next big story. The authorities will also calm down.
July 26, 2020 19:15 PM	Victor Yanakovich	You are right! I need to leave this position for good now.
July 26, 2020 19:15 PM	Jean	I will call you in some time. We have to get you out of there before this incident becomes bigger.

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NOTES TO THE COMPROMIS

- 1) Any questions pertaining to the jurisdiction/authority of the ICC, including but not limited to jurisdiction over the charge approved, shall not be raised by the participants.
- 2) For purposes of these mentioned issues, participants shall solely rely on the facts given in the official Compromis under strict application of the principle - “*as is, there is...whatever where is.*”
- 3) The participants are at the liberty to develop multiple strategies to be used in the different oral rounds of the trial, and the same is encouraged.
- 4) Notwithstanding anything mentioned in Point (c) above, the memorials submitted by the participants shall cover all aspects of the law as applicable to the factual matrix in the backdrop of the charge confirmed against the accused.
- 5) Paying due reverence to the spirit of SICTA, the participants are encouraged to understand and showcase the technical nuances of different events covered in the factual matrix.
- 6) Through oral submissions, the participants in their respective roles are expected to appreciate the Rules of Procedure and Evidence used by the International Criminal Court. Additionally, the participants are also encouraged to appreciate and put into use the various principles of international criminal law and public international law explored in various parallel jurisdictions and justify the application of the same in an ICC based trial with cogent reasons.
- 7) The official Compromis, including all the annexures, is a work of fiction and has been framed with the sole intention of facilitating the advanced study of international criminal law and for the development of professional advocacy skills of law students. The official Compromis has no connection, intentional or otherwise, to any historical/present political, sociological or cultural event and does not represent any ideology or affiliation to any political/non-political issue.